



Incoterms 2020

November 2019



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Agenda



(1) Introduction to Incoterms

- I. Importance of Regulating Terms for the Sale of Goods
- II. What LIIEA Members Need to Know and How to Work with Suppliers and Buyers
 - Risk of Loss, and Title
 - Incoterm Responsibilities

(2) Incoterms 2020

- I. Changes in 2020 Incoterms from 2010

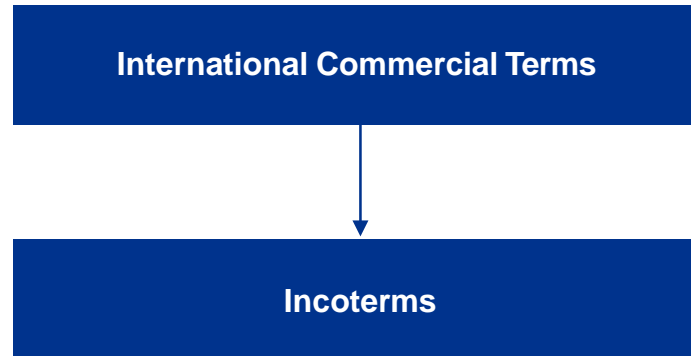
(3) Next Era

- I. How to Prepare for the Next Era of Global Trade



Intro to Incoterms

International Commercial Terms (Incoterms)



- Incoterms 2020: an international standard of trade terms developed by the International Chamber of Commerce (ICC).
- The ICC published the first set of international rules for the interpretation of trade terms in 1936. The 9th version, 2020, is the most recent version.
- Incoterms 2020 will enter into force on January 1, 2020, applying to all contracts entered into after this date. Note, should the parties desire to continue to use Incoterms 2010 after January 1, 2020, that is acceptable but must be documented accordingly.
- Purpose:
 - International rules for the **interpretation** of the most commonly used trade terms in foreign trade.
 - **Standardize** the international trade terms so that all parties understand their obligations and responsibilities.
 - Eliminate **misunderstanding**, disputes, and litigation caused from parties unaware of the different trading practices in their respective countries.

Risk of Loss, and Title

Incoterms define the place of delivery, which may help determine who throughout the transaction has risk of loss for the contracted goods.

- In determining whether a bona fide sale exists, CBP generally considers the transfer of title and risk of loss from the seller to the buyer.
- Generally, in the absence of an agreement between the seller and buyer to the contrary, risk of loss is considered to pass to the buyer when the merchandise is delivered in accordance with the incoterm.
- Title is generally considered to pass with risk of loss, unless otherwise agreed to.
- Payment of foreign inland freight and/or insurance costs may support the stated incoterms.

Risk of loss

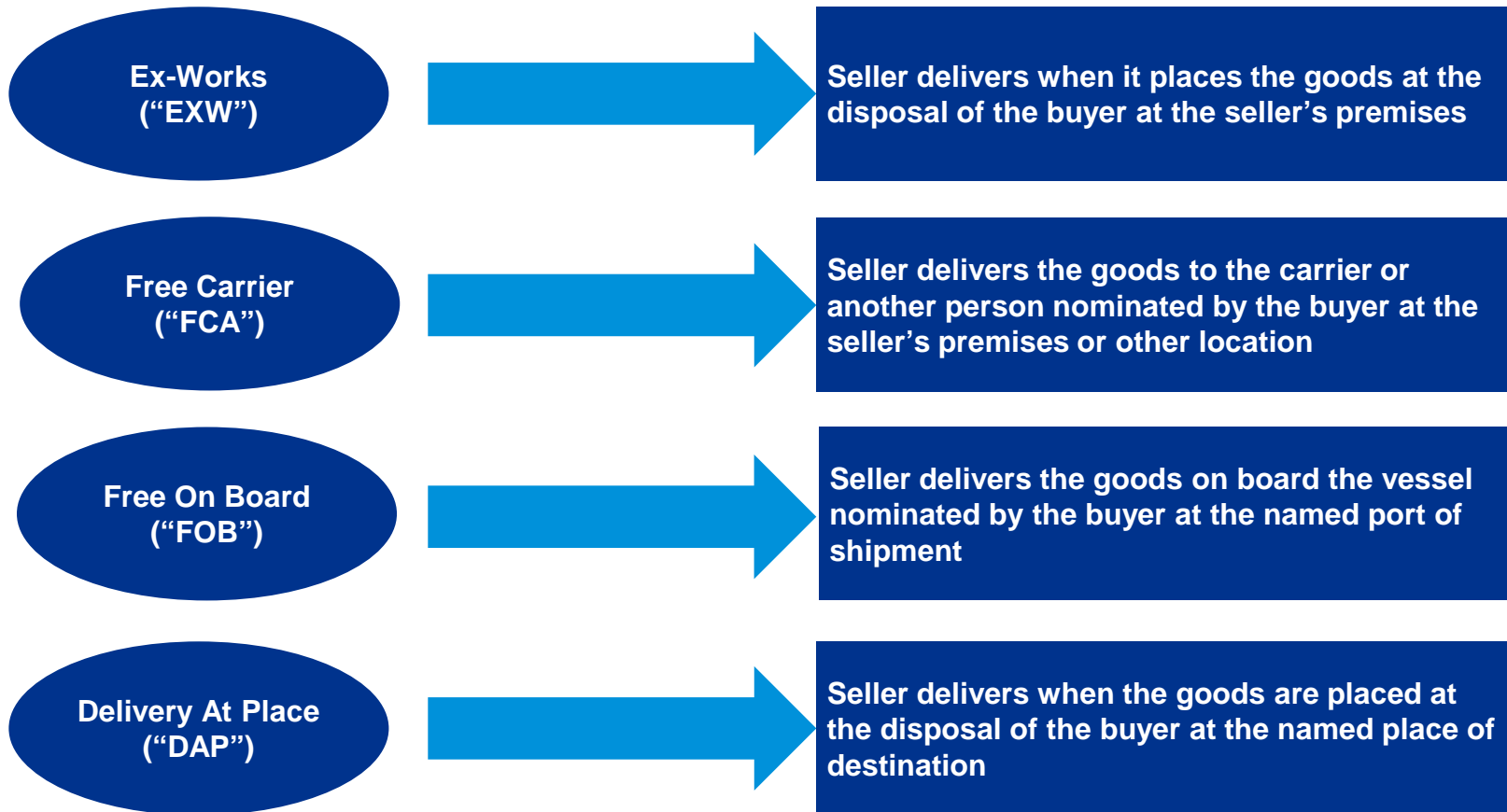
- Lost or damaged goods during shipment
- Passes to buyer when merchandise delivered

Transfer of title

- Who owns the finished goods?
- Who owns the raw materials?

Title & Risk of Loss

The below generally describes commonly used Incoterms (2020)



Responsibilities

Example: Chart of Responsibilities	EXW*	FCA	FOB	DAP
Inland Freight to Main Carrier	Buyer*	Seller or Buyer**	Seller	Seller***
Insurance	Generally the buyer and seller have no obligation to make a contract of insurance			
Unloading of Truck at Port of Export	Buyer	Buyer	Seller	Seller***
Export- Customs Declaration	Buyer	Seller	Seller	Seller***
Carriage to the Port of Import	Buyer	Buyer	Buyer	Seller***

* Under Ex-works, the seller has the responsibility to make the goods available to the buyer at an agreed upon point.

**FCA incoterms must specify a named place of delivery. "The buyer must contract or arrange at its own cost for the carriage of the goods from the named place of delivery, except when the contract of carriage is made by the seller . . ." as defined by the International Chamber of Commerce. (2020). Incoterms® 2020. Paris, France: ICC Services, Publications Department.

*** In regard to DAP, the 2020 rules now clarify that the buyer and seller can either contract or make internal arrangements for the carriage of the goods. Given the flexibility under the new rules, parties using DAP should document who has responsibility for carriage of goods to minimize ambiguity in the arrangements.(2020) Incoterms® 2020. Paris, France: ICC Services, Publications Department.

Example: Bona fide sale -risk of loss, and title

Example

- A Factory manufactures shirts in China and sells them to a Middleman in Hong Kong. The Middleman sells the shirts to the U.S. Importer.
- The container of shirts is delivered to the Importer's forwarder at the port in Hong Kong. While being loaded onto the shipping boat, the container falls into the harbor and the shirts are destroyed.

Who is responsible for replacing the shirts?



Bona fide sale -risk of loss, and title



Answer: It depends. What are the incoterms?



Flash Sale risk- simultaneous transfer of risk between all parties

Title and risk of loss

Example scenario: EXW | FOB

- Title and risk of loss transfer from the factory to the Middleman at the factory door
- Middleman transfers title and risk of loss to the importer when the goods are loaded on board the vessel

Example scenario: FCA | FOB

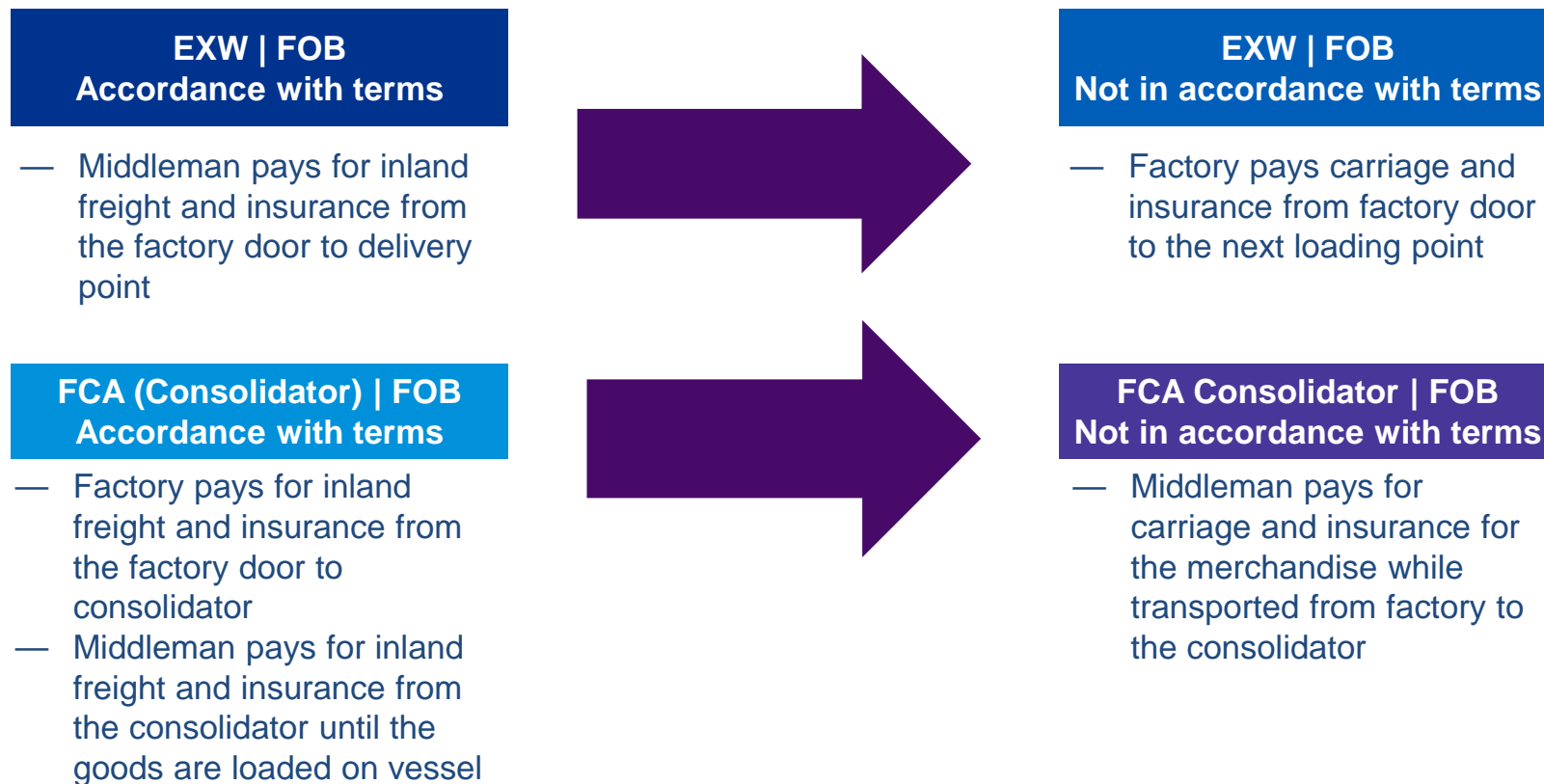
- Title and risk of loss transfers from the factory to the Middleman at the consolidator's warehouse
- Middleman transfers title and risk of loss to the importer when the goods are loaded on board the vessel

Example scenario: FOB | FOB

- Factory holds title and risk of loss from factory until goods are loaded on vessel
- Title and risk of loss simultaneously transfer from Middleman to the importer
- Factory pays inland freight and insurance from factory until goods loaded on vessel
- Commonly known as “flash sale”

Title and risk of loss

Examples where parties may not act in accordance with the incoterms. Consider a written agreement to accurately reflect the respective obligations



Note: The above are only general examples and statements. Compliance may vary on a case by case basis.

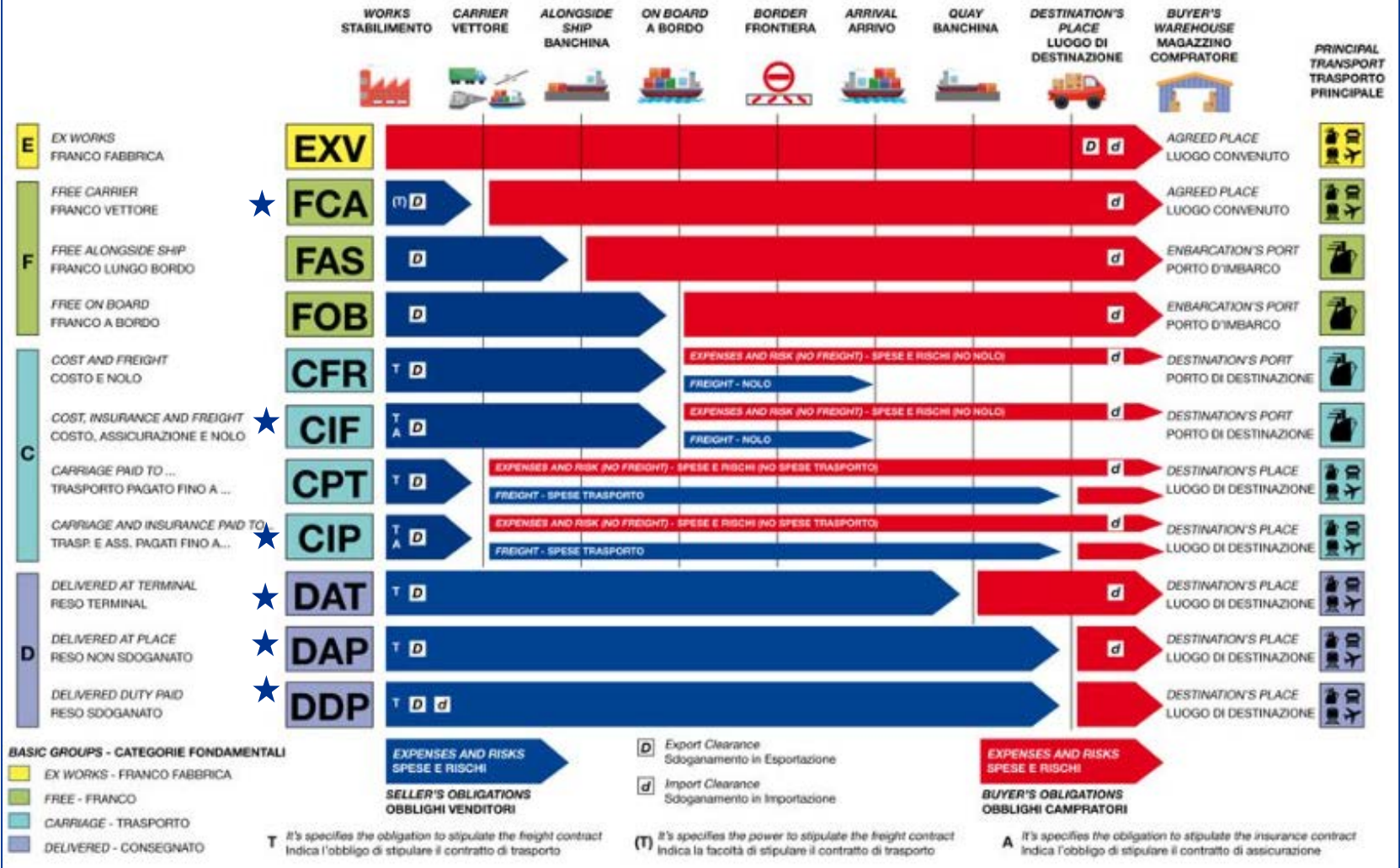


Incoterms 2020

★ Denotes slight change in 2020 ICC Incoterms, discussed on next slides

Incoterms® 2010

by the International Chamber of Commerce (ICC)



Summary of Changes

General Changes

- High-level notes at the beginning of each Incoterms are now called "Explanatory Notes for Users"
- Provides clearer explanation for the Incoterms in order to make it easier for parties to identify the most applicable Incoterms – how they should be used, when risk transfers, and cost allocations
- Separate section discusses cost responsibilities for each Incoterm, providing clarity to the various costs for each party
- Incoterms 2020 does not contain clarification surrounding parties' responsibility to contract and pay for the collection of the VGM ("Verified Gross Mass") of a container

Material Changes (discussed in additional detail on following slides)

- There have been no Incoterms removed or added
- Clarification is provided regarding bills of lading with on-board notation under the **FCA** Incoterms
- **CIF** and **CIP** Incoterms have added an optional higher level of insurance obligation for the seller
- **FCA**, **DAP**, **DPU**, and **DDP** Incoterms added flexibility surrounding responsibilities of carriage arrangement
- "**DAT**" is now called "**DPU**"
- Carriage arrangement responsibilities and costs are now more inclusive of security requirements



Details of Changes



Optional Additional Insurance Option for CIF and CIP

- Originally, under CIF and CIP, the seller had an obligation to the buyer to insure the goods under the minimum coverage outlined in "*Clauses (C) of the Institute Cargo Clauses (Lloyd's Market Association/ International Underwriting Association 'LMA/IUA, 2009')*."
- Now, for CIP the buyer and seller have the option to agree that the seller will arrange for insurance under the more inclusive coverage outlined in "*Clauses (A) of the Institute Cargo Clauses (Lloyd's Market Association/ International Underwriting Association 'LMA/IUA')*."
- Thus, in the 2020 Incoterms, CIP minimum insurance coverage has been increased for the benefit of the buyer.
- Regardless of the new insurance options, the parties are also able to agree to lower insurance coverage as desired.

FCA, DAP, DPU, and DDP Carriage Arrangement

- Originally, the Incoterms expressed the responsibility to contract for the carriage of goods; however, given the delivery points, there are instances where it may be more practical for the buyer or seller to utilize their own carrier, rather than contracting with a third party for such services.
- The new rules now clarify that the buyer and seller can either contract or make internal arrangements for the carriage of the goods. Given the flexibility under the new rules, parties should document who has responsibility for carriage of goods to minimize ambiguity in the arrangements.

Details of Changes



FCA Incoterms – Bill of Lading with Onboard Notation

- Generally under the FCA Incoterms, the delivery point is a location where risk of loss transfers from the seller to the buyer before the goods are loaded onto the boat.
- Given this, there was ambiguity surrounding the obligation of the buyer to provide the seller with a bill of lading with onboard notation, should the seller request it for financing needs.
- The FCA Incoterms have now been updated to allow the seller and buyer the option to agree that the buyer will request a bill of lading with onboard notation from its carrier demonstrating the goods have been placed onboard
- It is important to note that this option does not shift any obligation to the seller to arrange and pay for carriage.

DAT is now DPU

- DAT (or “Delivered at Terminal”) Incoterm is now called DPU (or “Delivered at Place Unloaded”).
- The name change was enacted in order to clarify that the named place of delivery does not have to specifically be a “terminal.” For example, the parties may agree to deliver to a consolidator or factory.
- The change is related to the name only. None of the responsibilities of the parties involved have changed.

Greater Emphasis on Security for Carriage

- Given the shift in focus to increased carriage security, the new 2020 Incoterms focus more heavily on standardized security requirements, including who bears the cost of cargo screening. Each rule now expressly provides for security-related obligations.
- For example, in regard to FCA, the 2020 rules now state that “the seller must comply with any transport-related security requirements up to delivery.”



Next Era

Key Considerations for New Incoterms



Confirm current Incoterms, including whether they are the appropriate term for the transaction.



Evaluate 2020 Incoterm changes, and understand whether any of the changes require review of the current Incoterms.



If Incoterm changes are required, update contracts and other commercial documentation to reflect changes.



Communicate Incoterm changes to freight forwarders, customs brokers or other parties.



Thank you!

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